

Stamp Duties Consolidation Act 1999

Part 1: Interpretation

This document should be read in conjunction with section 1 SDCA 1999

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1 Introduction

Part 1 of the Stamp Duties Consolidation Act (SDCA) 1999 defines certain terms used in the SDCA. Some of these definitions are discussed below.

2 Accountable Person

“Accountable Person” is defined by reference to various provisions within the SDCA 1999 and the Table to Schedule 1.

Prior to Finance Act 2014, section 108 SDCA 1999 effectively excluded from the charge to stamp duty the National Treasury Management Agency (NTMA) and the Minister for Finance in relation to functions exercised by the Minister that are capable of being delegated to the NTMA. However, section 108 inadvertently also excluded any party to an instrument executed by the Minister or the NTMA. The “accountable person” definition was amended by Finance Act 2014 (section 73) to bring such parties (but not the Minister or the NTMA) within the charge to stamp duty.

3 Residential property

“Residential property” is defined as a building or part of a building which, at the date the conveyance or lease is executed, was used as or was suitable for use as a dwelling. It includes:

- partially constructed/adapted dwellings and
- dwellings that have not been adapted for non-residential use since construction. This would include, for example, a derelict house.

Residential property also includes curtilage (that is, the normal ancillary domestic out-houses, yard, garden, etc.) up to an area of one acre exclusive of the site of the residential property. The treatment of car park spaces and marina berths is described below.

3.1 House with gardens larger than one acre

If a house and its curtilage comprising an area of more than one acre (0.4047 hectares) is sold, the consideration must be apportioned between the house/curtilage and the remaining land. The consideration apportioned to the house and curtilage is liable to the residential rate of duty and the consideration apportioned to the land exceeding one acre is liable at to the non-residential rate. The part of the land to be treated as curtilage, where the house and curtilage exceed one acre is the part that is most suitable for occupation and enjoyment with the house.

3.2 Car park spaces

The SDCA does not make specific provision for car park spaces. The definition of “residential property” in section 1 includes “the curtilage of the residential property

up to an area (exclusive of the site of the residential property) of one acre". The curtilage can include ancillary buildings, structures or areas, such as outhouses, a yard, a garage, a driveway, a garden etc., that are usually enjoyed and used with the residential property. A car park space, depending on the circumstances of the transaction, can come within the scope of the definition of "residential property".

Where a car park space is acquired with a house/apartment, the covenants relating to the car park space usually provide that the car park space is for the sole use of the owner of the house/apartment and that the ownership of the car park space cannot be assigned independently from the house/apartment.

3.2.1 House/apartment and car park space

Where a car park space(s) is acquired in conjunction with the acquisition of a house/apartment, for use and enjoyment in conjunction with the house/apartment, the car park space is regarded as forming part of the curtilage of the property and treated as "residential property" for stamp duty purposes.

Where the owner of a house/apartment did not acquire a car park space at the time of the purchase of the house/apartment but subsequently acquires a car park space within the complex, that is to be enjoyed and used in conjunction with the house/apartment, the transaction relating to the purchase of the car park space can be regarded as the purchase of residential property.

Where separate instruments are executed in relation to the house/apartment and the car park space, each transaction forms part of a larger transaction or of a series of transactions in respect of which the consideration is attributable to residential property. The rate of stamp duty chargeable on each of the instruments is determined on the basis of the aggregate amount payable for the apartment and the car park space.

Where the ownership of the car park space is provided for by means of the grant of an irrevocable licence, which entitles the licensee to the limited right to use the car park space, such an instrument, though described as a licence, operates as a lease for stamp duty purposes and is chargeable to ad valorem stamp duty.

3.2.2 Car park space on its own

Where a person acquires a car park space, that is not to be enjoyed and used in conjunction with a house/apartment, the car park space is regarded as non-residential property for stamp duty purposes.

3.3 Marina berths

Marina berths are similar to car park spaces in many respects. The term "marina berth" is not defined in the SDCA.

The definition of “residential property” in section 1 of the SDCA includes “the curtilage of the residential property up to an area (exclusive of the site of the residential property) of one acre”. The curtilage can include ancillary buildings, structures or areas, such as outhouses, a yard, a garage, a driveway, a garden, etc., which are usually enjoyed and used with the residential property.

The first situation that may arise is where the marina berth is acquired in conjunction with the acquisition of a house/apartment, for use and enjoyment in conjunction with the house/apartment. In these circumstances, the berth is regarded as forming part of the curtilage of the property and treated as “residential property” for stamp duty purposes.

Where separate instruments are executed in relation to the house/apartment and the marina berth, each transaction forms part of a larger transaction or of a series of transactions in respect of which the consideration is attributable to residential property. The rate of stamp duty chargeable on each of the instruments is determined on the basis of the aggregate amount payable for the house/apartment and the marina berth.

The second situation that may arise is where a marina berth is not acquired in conjunction with a house/apartment. In such a situation, the marina berth is regarded as non-residential property for stamp duty purposes.

4 Civil partners/partnership

Following on from the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the stamp duty reliefs available to spouses were extended to cover transfers between civil partners. This Act defines the terms “civil partner” and “civil partnership”.

Sections 96 and 97 SDCA (see Part 7 of this manual) set out the treatment of property transfers between spouses, civil partners and transfers following the dissolution of marriages and civil partnerships. Section 97A SDCA (see Part 7 of this manual) sets out the stamp duty treatment applicable to certain transfers between cohabitants.

5 Stock

In respect of instruments executed on or after 8 February 2012, the definition of “stock” in section 1 includes “any option over any share in such stocks or funds”. The effect of this is that the 1% rate of duty now applies to transfers of options over shares - in the same way as it applies to shares – under the heading “Conveyance or Transfer on sale of any stocks or marketable securities” in Schedule 1 of the SDCA. Previously, stamp duty applied to transfers of options under the heading “Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in Schedule 1 of the SDCA – although as a matter of practice Revenue accepted a 1% rate of duty.